

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENGAMIN RAY YELLOW OWL,

Defendant.

CR 17-32-GF-BMM-JTJ

FINDINGS AND  
RECOMMENDATIONS

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**I. Synopsis**

Defendant Bengamin Ray Yellow Owl (Yellow Owl) has been accused of violating the conditions of his supervised release. (Doc. 46). Yellow Owl admitted to the alleged violations. Yellow Owl's supervised release should be revoked. Yellow Owl should be sentenced to custody for a term of 3 months on Count 2, with 57 months of supervised release to follow and to a term of 3 months on Count 3, with 57 months of supervised release to follow, with both the custodial and supervised release terms to run concurrently. During the first sixty (60) days of Yellow Owl's supervised release, he shall be placed in a secure in-patient drug treatment facility such as Connections Corrections.

**II. Status**

Yellow Owl pled guilty on July 24, 2017, to the offense of Sexual Abuse of a Minor, in violation of 18 U.S.C §§1153(a), 2243(a) as charged in Count 2 of the Indictment and to the offense of Distribution of a Controlled Substance to a Person under 21, in violation of 21 U.S.C. §§ 841, 859(a) as charged in Count 3 of the Indictment (Doc. 22). Yellow Owl was sentenced to 98 months of custody on Count 2, with 5 years of supervised release to follow, and to 98 months of custody on Count 3, with 6 years of supervised release to follow, with both the custodial terms and the supervised release terms to run concurrently. (Doc. 38). Yellow Owl's current term of supervised release began on March 18, 2024.

### **Petition**

On August 29, 2024, the United States Probation Office filed a Petition requesting that the Court revoke Yellow Owl's supervised release. (Doc. 46). The Petition alleged Yellow Owl violated conditions of his supervised release by: (1) using methamphetamine on or about June 21, 2024; (2) failing to comply with substance abuse treatment requirements on August 14, 2024; (3) failing to report for sex offender treatment on August 14, 2024; (4) failing to answer truthfully questions by his probation officer regarding his sobriety by providing a fake urine sample on August 14, 2024; (5) using methamphetamine on August 13, 2024; (6) failing to comply with substance abuse testing on August 21, 2024; and (7) failing to report for sex offender treatment on August 21, 2024.

### **Initial Appearance**

Yellow Owl appeared before the Court on September 23, 2024. Yellow Owl was represented by counsel. Yellow Owl stated that he had read the Petition and that he understood the allegations against him. Yellow Owl waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

### **Revocation hearing**

Yellow Owl appeared before the Court on September 23, 2024. Yellow Owl admitted that he had violated the conditions of supervised release as set forth in the Petition by: (1) using methamphetamine on or about June 21, 2024; (2) failing to comply with substance abuse treatment requirements on August 14, 2024; (3) failing to report for sex offender treatment on August 14, 2024; (4) failing to answer truthfully questions by his probation officer regarding his sobriety by providing fake urine sample on August 14, 2024; (5) using methamphetamine on August 13, 2024; (6) failing to comply with substance abuse testing on August 21, 2024; and (7) failing to report for sex offender treatment on August 21, 2024. Yellow Owl's violations are serious and warrant revocation of his supervised release.

### **Sentencing hearing**

Yellow Owl appeared before the Court on September 23, 2024. Yellow Owl's violations are a Grade C. His criminal history category is I. Yellow Owl's

underlying offense on Count 2 is a Class C felony and on Count 3 is a Class B felony. Yellow Owl could be incarcerated for up to 24 months on Count 2 and for up to 36 months on Count 3. Yellow Owl could be ordered to remain on supervised release for 60 months less any custody time on Count 2 and to 60 months less any custody time on Count 3. The United States Sentencing Guidelines call for a term of custody of 3 to 9 months for both Counts 2 and 3.

### **III. Analysis**

Yellow Owl's supervised release should be revoked. Yellow Owl should be sentenced to custody for a term of 3 months on Count 2, with 57 months of supervised release to follow and to a term of 3 months on County 3, with 57 months of supervised release to follow, with both the custodial and supervised release terms to run concurrently. During the first sixty (60) days of Yellow Owl's supervised release, he shall be placed in a secure in-patient drug treatment facility such as Connections Corrections. This sentence is sufficient but not greater than necessary.

#### **IV. Conclusion**

The Court informed Yellow Owl that the above sentence would be recommended to the Chief United States District Judge Brian Morris. The Court also informed Yellow Owl of his right to object to these Findings and Recommendations within 14 days of this issuance. The Court explained to Yellow Owl that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The Court **FINDS:**

That BENGAMIN RAY YELLOW OWL has violated the conditions of his supervised release by: (1) using methamphetamine on or about June 21, 2024; (2) failing to comply with substance abuse treatment requirements on August 14, 2024; (3) failing to report for sex offender treatment on August 14, 2024; (4) failing to answer truthfully questions by his probation officer regarding his sobriety by providing a fake urine sample on August 14, 2024; (5) using methamphetamine on August 13, 2024; (6) failing to comply with substance abuse testing on August 21, 2024; and (7) failing to report for sex offender treatment on August 21, 2024.

The Court **RECOMMENDS:**

That the District Court revoke Yellow Owl's supervised release and sentence Yellow Owl to custody for a term of 3 months on Count 2, with 57 months of supervised release to follow and to a term of custody of 3 months on County 3, with 57 months of supervised release to follow, with both the custodial and supervised release terms to run concurrently. During the first sixty (60) days of Yellow Owl's supervised release, he shall be placed in a secure in-patient drug treatment facility such as Connections Corrections.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND  
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO  
OBJECT**

The parties may serve and file a written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. Section 636(b)(1). A United States district court judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district court judge and may waive the right to appear and allocute before a district court judge.

DATED this 24th day of September 2024.

  
John Johnston  
United States Magistrate Judge